

HANSON BRIDGETT LLP  
ALEXANDER J. BERLINE - 158098  
aberline@hansonbridgett.com  
CHRISTINE HILER - 245331  
chiler@hansonbridgett.com  
425 Market Street, 26th Floor  
San Francisco, CA 94105  
Telephone: (415) 777-3200  
Facsimile: (415) 541-9366

Attorneys for Plaintiff BALJIT SINGH,  
individually and allegedly doing business as  
GREYLINE CAB/YELLOW CAB

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

BALJIT SINGH, individually and  
allegedly doing business as  
GREYLINE CAB/YELLOW CAB,

Plaintiff,

v.

GAINSCO INC. and DOES 1 - 10,  
Defendant.

No. C08-03874 PJH

[State Court Action No. RG 08395501]

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF PLAINTIFF'S OPPOSITION  
TO DEFENDANT'S MOTION TO DISMISS**

Date: September 24, 2008

Time: 9:00 a.m.

Ctrm: 3

Judge: Hon. Judge Phyllis J. Hamilton

**Action Filed: June 27, 2008**

1 Plaintiff BALJIT SINGH ("Plaintiff"), by and through his attorneys, hereby requests  
 2 the Court to take judicial notice pursuant to Federal Rules of Evidence 201 of the  
 3 following document offered in support of Plaintiff's Opposition to Defendant General  
 4 Agents Insurance Company of America, Inc.'s ("GAINSCO's") Motion to Dismiss:

5 A copy of the Complaint filed by Plaintiff in the Alameda County Superior Court of  
 6 California on June 27, 2008, in the above entitled action, a true and correct copy of  
 7 which is attached hereto as Exhibit 1.

### 8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9 Pursuant to Federal Rules of Evidence 201, a "judicially noticed fact must be one  
 10 not subject to reasonable dispute in that it is either (1) generally known within the  
 11 territorial jurisdiction of the trial court or (2) capable of accurate and ready determination  
 12 by resort to sources whose accuracy cannot reasonably be questioned." (Fed. Rule  
 13 Evid. R. 201(b).) "A court shall take judicial notice if requested by a party and supplied  
 14 with the necessary information." (Fed. R. Evid. 201(d).)

15 Under this rule, courts may take judicial notice of documents filed in federal and  
 16 state courts. (See *e.g.*, *Agcaoili v. Wiersielis*, 273 Fed. Appx. 138, fn. 1 (3d Cir. N.J.  
 17 2008) (judicially noticing the complaint previously filed by the same plaintiff against the  
 18 same defendant but dismissed for lack of subject matter jurisdiction); see *e.g.*, *Doran v.*  
 19 *Eckold*, 409 F.3d 958, 962, fn.1 (8th Cir. 2005) (judicially noticing a search warrant and  
 20 documents considered by the district court judge at a summary judgment hearing); see  
 21 *also* Jones & Rosen, *Rutter Group Practice Guide: Federal Civil Trials and Evidence*  
 22 (The Rutter Group 2008) ¶8:875.) Courts may take judicial notice of records of another  
 23 court because they are matters of public record that are capable of accurate and ready  
 24 determination by resort to sources whose accuracy cannot be reasonably questioned.  
 25 (Fed. R. Evid. 201(b); see *also* *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002)  
 26 (judicially noticing "the California Court of Appeal opinion and the briefs filed in that  
 27 proceeding and in the trial court").)

28 Here, Plaintiff filed his complaint in the Superior Court of Alameda County

1 Superior Court of California on June 27, 2008. Accordingly, the existence of the  
2 complaint and the allegations that it contains are matter of public record capable of  
3 accurate and ready determination by resort to sources whose accuracy cannot be  
4 reasonably questioned.

5 Therefore, Plaintiff respectfully requests that this Court take judicial notice of  
6 Exhibit 1.

8 DATED: September 3, 2008

HANSON BRIDGETT LLP

9  
10 By: Christ Hiler  
11 ALEXANDER J. BERLINE  
12 CHRISTINE HILER  
13 Attorneys for Plaintiff BALJIT SINGH,  
14 individually and allegedly doing  
15 business as GREYLINE CAB/YELLOW  
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# **EXHIBIT 1**

1 HANSON BRIDGETT LLP  
2 ALEXANDER J. BERLINE - 158098  
3 aberline@hansonbridgett.com  
4 CHRISTINE HILER - 245331  
5 chiler@hansonbridgett.com  
6 425 Market Street, 26th Floor  
7 San Francisco, CA 94105  
8 Telephone: (415) 777-3200  
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10 Attorneys for Plaintiff BALJIT SINGH,  
11 individually and allegedly doing business as  
12 GREYLINE CAB/YELLOW CAB

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF ALAMEDA**

BALJIT SINGH, individually and  
allegedly doing business as  
GREYLINE CAB/YELLOW CAB,

Plaintiff,

v.

GAINSCO INC. and DOES 1 - 10,  
Defendant.

No. *La* 08395501

**COMPLAINT FOR DAMAGES**

**INTRODUCTION**

Taxi driver Kuljeet Singh was injured on April 23, 1998 while driving a taxi cab (Yellow Cab #112, CA #5S18784), filed a complaint making certain allegations against BALJIT SINGH ("BALJIT"), and obtained a substantial judgment. This is an action by BALJIT against the Auto & General Liability insurer, defendant GAINSCO, INC. (hereinafter, "GAINSCO"), and DOES 1 through 10 (collectively referred to as "Defendants"), to recover sums paid to satisfy that Kuljeet Singh judgment (a true and correct copy which is attached hereto as Exhibit A).

**ENDORSED  
FILED  
ALAMEDA COUNTY**

JUN 27 2008

CLERK OF THE SUPERIOR COURT

By M. Hayes

Deputy

**PARTIES**

1  
2 1. At all times herein mentioned, Bay Area Taxi Management, Inc. ("BATM")  
3 was a California corporation with its principal place of business in Oakland, California.  
4 BATM managed the operations of the Yellow Cab fleet, and BALJIT was an officer of  
5 BATM.

6 2. At all times herein mentioned, BALJIT was an individual and a resident of  
7 Alameda, California.

8 3. At all times herein mentioned, GAINSCO was a Texas insurer authorized  
9 to do business in the State of California.

10 4. The true names and capacities, whether individual, corporate or otherwise,  
11 of the Defendants named herein as DOES 1 through 10, are unknown to Plaintiff, who,  
12 therefore, sues said Defendants under such fictitious names. Plaintiff is informed and  
13 believes, and thereon allege, that each of the Defendants designated herein as a "DOE"  
14 are responsible in some manner for the events and happenings herein referred to and  
15 caused some injuries and damages to Plaintiff as herein alleged.

**THE INSURANCE POLICY**

16  
17 5. On information and belief, in 1997, Plaintiff submitted an application for  
18 Auto & General Liability Insurance to GAINSCO. On information and belief, thereafter, in  
19 consideration of premium payments, GAINSCO by its duly authorized agents executed  
20 and delivered in Oakland, California, an Auto & General Liability policy of insurance  
21 bearing policy number GPP143242, which was effective October 26, 1997, to October  
22 26, 1998 (hereinafter, the "GAINSCO POLICY").

**THE UNDERLYING KULJEET ACTION**

23  
24 6. On information and belief, on or about early 1998 Kuljeet Singh entered  
25 into an independent contractor agreement to perform taxi cab driver duties for  
26 GREYLINE CAB/YELLOW CAB.

27 7. On information and belief, on or about April 23, 1998, Kuljeet Singh  
28 responded to a call at 935 Triangle Court, Richmond, California. Kuljeet Singh alleged

1 that the safety shield, between the passenger and driver compartments, was defective.  
2 Kuljeet Singh further alleged that GREYLINE/YELLOW cab violated its own safety  
3 guidelines in dispatching the call. Due to this alleged negligence, Kuljeet Singh alleged  
4 that he was severely injured in a gun shooting incident (hereinafter, the "INCIDENT").

5 8. Kuljeet Singh and his wife filed a suit for negligence, assault, and loss of  
6 consortium against Plaintiff (hereinafter, the "KULJEET ACTION").

7 9. Plaintiff was not served with the KULJEET ACTION complaint, and the  
8 matter went into default.

9 10. On information and belief, Plaintiff timely tendered the KULJEET ACTION  
10 complaint to GAINSCO, and/or its agents.

11 11. Prior counsel for Plaintiff tried to set aside that default, but the request was  
12 denied and a substantial default judgment was entered (1) in favor of Kuljeet Singh in  
13 the sum of one million dollars (\$1,000,000), together with costs and disbursements, and  
14 interest on said judgment; and (2) in favor of Kuljeet Singh's wife in the sum of fifty  
15 thousand (\$50,000), together with costs and disbursements, and interest on said  
16 judgment.

17 12. The matter was dormant for several years, until counsel for Kuljeet Singh  
18 and his wife started enforcement proceedings on the judgment, which the parties  
19 eventually settled for \$925,000 (which has now been paid).

20 13. On May 1, 2008, counsel for Plaintiff sent a letter to GAINSCO seeking  
21 reimbursement of these sums and of all defense expenses fees and costs. GAINSCO  
22 disputes responsibility and refuses to reimburse Plaintiff.

### 23 JURISDICTION AND VENUE

24 14. Jurisdiction is proper in this Superior Court in and for the City and County  
25 of Alameda pursuant to California Code of Civil Procedure section 410.10 because this  
26 Court has general subject matter jurisdiction and no statutory exceptions to jurisdiction  
27 exist.

28 15. Venue is proper in the City and County of Alameda pursuant to California

1 Code of Civil Procedure section 395.5, *inter alia*, because the contracts of insurance  
2 were delivered and performed in Alameda.

3 **FIRST CAUSE OF ACTION**

4 **(Breach of Insurance Contract, By Plaintiff Against GAINSCO, and DOES 1-10.)**

5 16. Plaintiff incorporates by reference, as though fully set forth herein, the  
6 above paragraphs 1 through 15.

7 17. On information and belief, Plaintiff fully and timely complied with all  
8 provisions of the GAINSCO POLICY including, but not limited to, timely payment of the  
9 premium and timely tender of the underlying claim and the KULJEET ACTION to  
10 GAINSCO. In the alternative, Plaintiff alleges that he was excused from full compliance  
11 because the insurance at issue was mandatory and required by State and/or Local law.

12 18. GAINSCO was and is contractually obligated to defend and indemnify  
13 Plaintiff from suits for bodily injury.

14 19. Plaintiff was sued in the KULJEET ACTION for bodily injury stemming from  
15 the INCIDENT. Plaintiff demanded that he be defended and indemnified under the  
16 GAINSCO POLICY. GAINSCO has refused and continues to refuse to defend or  
17 indemnify Plaintiff, and therefore is in breach of contractual obligations GAINSCO  
18 undertook in the GAINSCO POLICY.

19 20. Plaintiff performed all other duties as required under the GAINSCO  
20 POLICY, except those duties which have been excused by GAINSCO'S breach or non-  
21 performance.

22 21. The acts of GAINSCO alleged above were done unreasonably and in  
23 breach of the GAINSCO POLICY and the contractual covenant of good faith and fair  
24 dealing.

25 22. As a proximate result of GAINSCO'S contractual breaches, Plaintiff has  
26 been compelled to engage counsel and to incur attorneys' fees and other costs and  
27 expenses in the defense of the KULJEET ACTION and in prosecution of this Complaint.  
28



1 As a further proximate result of GAINSCO's wrongful denial, Plaintiff has been  
2 compelled to incur related expenses all according to proof, including but not limited to  
3 paying the \$925,000 settlement.

#### 4 SECOND CAUSE OF ACTION

5 **(Declaratory Relief, That GAINSCO is Obligated to Defend Plaintiff from the**  
6 **KULJEET ACTION, By Plaintiff Against GAINSCO, and DOES 1-10.)**

7 23. Plaintiff incorporates by reference, as though fully set forth herein, the  
8 above paragraphs 1 through 22.

9 24. An actual controversy has arisen and now exists between Plaintiff and  
10 GAINSCO concerning their respective rights and duties in that GAINSCO contends that  
11 it has no obligation to defend Plaintiff from the KULJEET ACTION despite, on  
12 information and belief, Plaintiff's proper tender. Plaintiff contends that GAINSCO is  
13 obligated to defend Plaintiff.

14 25. A judicial declaration is necessary and appropriate at this time under the  
15 circumstances in order that Plaintiff may ascertain their rights and duties under the  
16 GAINSCO POLICY. Wherefore Plaintiff prays for a declaratory judgment that GAINSCO  
17 must defend Plaintiff from the KULJEET ACTION.

#### 18 THIRD CAUSE OF ACTION

19 **(Declaratory Relief, That GAINSCO is Obligated to Indemnify Plaintiff from the**  
20 **SINGH LAWSUIT, By Plaintiff Against GAINSCO, and DOES 1-10.)**

21 26. Plaintiff incorporates by reference, as though fully set forth herein, the  
22 above paragraphs 1 through 25.

23 27. An actual controversy has arisen and now exists between Plaintiff and  
24 GAINSCO concerning their respective rights and duties in that GAINSCO contends that  
25 it has no obligation to indemnify Plaintiff from the KULJEET ACTION. Plaintiff contends  
26 that GAINSCO is obligated to indemnify Plaintiff.

27 28. A judicial declaration is necessary and appropriate at this time under the  
28 circumstances in order that Plaintiff may ascertain his rights and duties under the

1 GAINSCO POLICY. Wherefore Plaintiff prays for a declaratory judgment that GAINSCO  
2 must indemnify Plaintiff from the KULJEET ACTION.

3 **FOURTH CAUSE OF ACTION**

4 **(Tortious Bad Faith Denial of Duty to Defend and/or Indemnify, By Plaintiff Against**  
5 **GAINSCO, and DOES 1-10.)**

6 29. Plaintiff incorporates by reference, as though fully set forth herein, the  
7 above paragraphs 1 through 28.

8 30. GAINSCO'S acts alleged above were done unreasonably and in tortuous  
9 breach of the covenant of good faith and fair dealing.

10 31. As a proximate result of GAINSCO'S refusal to cover the INCIDENT,  
11 Plaintiff was compelled to incur attorneys' fees and other costs and expenses in the  
12 defense of the KULJEET ACTION and the litigation of this Complaint. As a further  
13 proximate result of GAINSCO'S wrongful denial Plaintiff has been forced to incur related  
14 expenses all according to proof, including but not limited to paying the \$925,000  
15 settlement.

16 32. The acts of GAINSCO alleged above were done intentionally, maliciously,  
17 oppressively, and with the intent of defrauding Plaintiff, who may therefore recover  
18 exemplary or punitive damages.

19 **PRAYER**

20 WHEREFORE, Plaintiff prays as follows:

- 21 1. For damages according to proof for breach of contract;
- 22 2. For general and compensatory damages from GAINSCO according to  
23 proof;
- 24 3. For defense attorneys' fees and costs;
- 25 4. For prejudgment interest in an amount to be proven at the time of trial;
- 26 5. For a declaration that GAINSCO must defend Plaintiff from the KULJEET  
27 ACTION;
- 28 6. For a declaration that GAINSCO must indemnify Plaintiff from the

1 KULJEET ACTION;

2 7. For attorneys' fees and costs incurred in obtaining GAINSCO POLICY  
3 benefits, as provided by law (i.e., *Brandt v. Sup. Ct. (Standard Ins. Co.)* (1985) 37 Cal.3d  
4 813);

5 8. For exemplary and punitive damages as against GAINSCO;

6 9. For costs of suit herein incurred; and,

7 10. For such other and further relief as this Court may deem proper.

8  
9 DATED: June 27, 2008

HANSON BRIDGETT LLP

10  
11 By: 

CHRISTINE HILER

12 Attorneys for Plaintiff BALJIT SINGH,  
13 individually and allegedly doing  
14 business as GREYLINE CAB/YELLOW  
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**EXHIBIT A**

1 ELIZABETH F. MCDONALD, State Bar No. 177363  
2 LAW OFFICES OF ELIZABETH F. MCDONALD  
3 55 New Montgomery Street, Suite 724  
4 San Francisco, California 94105  
5 Telephone: (415) 512-7788  
6 Facsimile: (415) 512-7440

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8 Attorneys for Plaintiffs,  
9 KULJEET SINGH and KAMALDEEP SINGH  
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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA

11 KULJEET SINGH and KAMALDEEP  
12 SINGH,

No. C99-01230

13 Plaintiffs,

JUDGMENT BY COURT AFTER DEFAULT

14 vs.

15 BALJIT SINGH, individually and  
16 doing business as GREYLINE  
17 CAB/YELLOW CAB, et al.

18 Defendants.  
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This cause came on to be heard before the Honorable James R. Trembath presiding in Department 17, on November 30, 1999 at 9:00 a.m., Elizabeth F. McDonald of the Law Offices of Elizabeth F. McDonald appearing as attorney for plaintiffs, and it appearing that defendant(s) having been regularly served with process, having failed to appear and answer the plaintiff's complaint filed herein, and the default of said defendant(s) having been duly entered and evidence having been introduced in open session of this Court:

JUDGMENT BY COURT AFTER DEFAULT

1 The court having heard the testimony of plaintiffs and having  
2 reviewed the documentary evidence presented by plaintiffs hereby  
3 finds that: Defendant BALJIT SINGH, individually and doing business  
4 as GREYLINE CAB\YELLOW CAB was negligent; that as a result of  
5 defendant's negligence, plaintiff KULJEET SINGH suffered severe  
6 life threatening injuries; that as a further result of defendant's  
7 negligence plaintiff KULJEET SINGH has incurred economic damages  
8 for medical treatment and services in the sum of \$380,000, and  
9 further, plaintiff KULJEET SINGH suffered wage loss in the sum of  
10 \$30,000.

11 IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that plaintiff  
12 KULJEET SINGH recover from defendant BALJIT SINGH, individually and  
13 doing business as GREYLINE CAB\YELLOW CAB damages in the sum of One  
14 Million Dollars [\$1,000,000.00], together with plaintiff's costs  
15 and disbursements, and interest on said judgment as provided by  
16 law.

17 IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that plaintiff  
18 KAMALDEEP SINGH recover from defendant BALJIT SINGH, individually  
19 and doing business as GREYLINE CAB\YELLOW CAB damages in the sum of  
20 Fifty Thousand [\$50,000], together with plaintiff's costs and  
21 disbursements, and interest on said judgment as provided by law.

22 The Clerk is ordered to enter the judgment.

23  
24 Dated: 2-24-00

JAMES R. TREMBATH  
Hon. James R. Trembath  
Judge of the Superior Court